

**REMARKS**

This paper is being filed in response to the Advisory Action dated May 15, 2003 and the Office Action dated March 11, 2003 that were issued in connection with the above-identified patent application. Applicants respectfully request continued examination of the instant application pursuant to 35 U.S.C. §132(a) and 37 C.F.R. §1.114(a)(2) and enclose herewith the fee required pursuant to 37 C.F.R. §1.17(e). Applicants also enclose herewith a Petition for Extension of Time pursuant to 37 C.F.R. §1.136(a) and the fee required under 37 C.F.R. §1.17(a)(1). Applicants respectfully request reconsideration of the instant application in view of the amendments and remarks presented herein.

Claims 1-27 are pending in the instant application. Claims 18, 22, 23, and 24 have been amended herein. These amendments are supported by the specification as originally filed by, *inter alia*, at original claims 18, 22, 23, and 24, and therefore, do not constitute new matter. Claims 28-45 have been added. New claims 28-38 and 40-45 are fully supported by the application as filed by, *inter alia*, claims 1, 3, 5, 7, 9-11, and 18-27, and therefore, do not constitute new matter. New claim 39 is fully supported by the application as filed by, *inter alia*, paragraphs [0065] and [0066], and therefore, does not constitute new matter. Thus, claims 1-45 will be pending upon entry of the instant amendment.

Applicants filed a Response to the Office Action dated March 11, 2003 on April 18, 2003 following a telephonic interview with the Examiner and his supervisor, Christopher Lowe, on April 16, 2003. According to the Advisory Action dated May 15, 2003, Applicant's Response of April 18, 2003 has been considered and the obviousness type double patenting rejections have been withdrawn. Applicants thank the Examiner and his supervisor for withdrawing these rejections.

However, the Advisory Action indicates the rejections of claim 1-27 under 35 U.S.C. § 112, second paragraph as allegedly indefinite have been maintained for the reasons articulated in the Office Action dated March 11, 2003. In that Office Action, the Examiner rejected claims 1-27 under 35 U.S.C. § 112, second paragraph and alleged that claim 1 is indefinite in its use of the open-ended term “having” instead of a closed term. The Examiner has alleged that it is unclear whether the claimed peptides encompass any polypeptide segments, any peptidomimetic molecules, and any conjugates comprising amino acid SEQ ID NOS:1-3. *See* Paper No. 9, Office Action dated March 11, 2003, page 2, lines 16-22. In addition, the Examiner has considered Applicant's arguments, but found them unpersuasive, allegedly because “...the claims of the current application are directed to the disclosed antimicrobial peptides *per se*...” *See* Paper No. 9, Office Action dated March 11, 2003, page 3, lines 11-14 (emphasis in original). The Examiner extended this rejection to also encompass claims 3, 5, 7 and “the dependent claims. Claim 18 has also been rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite in its use of the phrase “at least one cysteine residue.”

Applicants traverse these rejections and assert that claims 1-27 as well as new claims 28-45 are clear and definite. Applicants respectfully submit that the rejection of claims 1-27 for use of the term “having” is **overly broad**. Claims 3-11 and 18-19 are dependent on claim 1, which recites the term “having.” However, claims 2, 12-17, and 20-27 neither recite the term “having” nor are dependent on claim 1. Claim 2, as previously amended, is **independent** and does not recite the term “having.” In addition, claims 13-17 are dependent on claim 12, which does not recite the term “having.” Similarly, claim 21 is dependent on claim 20, claims 23 and 26-27 are dependent on claim 22, and claims 25-27 are dependent on claim 24, none of which recite the term “having.” Therefore, Applicants respectfully request acknowledgement that the

alleged basis for rejecting claim 1 and its dependent claims, namely use of the term “having,” is inapplicable to claims 2, 12-17, and 20-27 and that these claims are in condition for allowance.

Applicants continue to maintain that claims 1, 3-11, and 18-19 are clear and definite. The examiner has alleged that the use of the term “having” is indefinite since the claims are directed to the claimed antimicrobial peptides per se. However, this argument is without merit because Applicants are permitted to be their own lexicographers. *See e.g.* MPEP §2173.01. Applicants use of the term “having” is commensurate in scope with the disclosure which teaches that peptides of the invention, such as SEQ ID NOS:1-3, may be modified by the addition of one or more amino acids, substitution of D-amino acids (paragraph [0040]), acetylation at the N-terminus (paragraph [0042]), and amidation or lipidation at the C-terminus (paragraph [0042]). In addition, the specification discloses that the peptides of the invention may be multimeric, *e.g.* bis-eLLP (paragraph [0038]). The specification further teaches that peptides of the invention may be attached to a cargo such as an antibacterial enzyme, an antibiotic, and a drug (paragraphs [0065] and [0066]). None of these modifications vitiate the fundamental character of the molecule as a “peptide” since, regardless of whether peptides of SEQ ID NOS:1, 2, or 3 are acetylated or lipidated or linked to penicillin, the whole molecule, according to the specification, is still a “peptide” having the recited sequence of amino acids linked by peptide bonds. *See e.g.* paragraph [0065] (“the eLLPs [engineered lentiviral lytic **peptides**] of the present invention is directed to a peptide-cargo complex”). Applicants, therefore, respectfully request withdrawal of this rejection.

Claim 18 has been rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite in its use of the phrase “at least one cysteine.” Applicants traverse this rejection and

assert that claim 18, as amended herein, is clear and definite. Applicants, therefore, respectfully request withdrawal of this rejection.

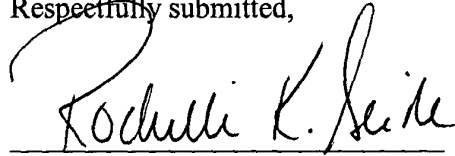
Applicants assert that new claims 28-45 are in condition for allowance. Since these claims recite “antimicrobial compound[s],” they are not subject to rejection under 35 U.S.C. § 112, second paragraph on the grounds of record for claims 1-27. Moreover, Applicants consider these new claims to be at least as broad as the originally-filed corresponding claims such that submission of these new claims does not constitute a narrowing amendment.

In summary, Applicants believe that claims 1-45 are in condition for allowance and, accordingly, respectfully solicit prompt favorable action.

Applicants enclose herewith the fee required under 37 C.F.R. §§ 1.16(b), 1.16(c), 1.17(a)(2), and 1.17(e). Applicants do not believe that any additional fees are required with this paper. Nevertheless, the Commissioner is hereby authorized to charge any fees occasioned by this submission not otherwise enclosed herewith to Deposit Account No. 02-4377. Please credit any overpayment of fees associated with this filing to the above-identified deposit account. A duplicate of this page is enclosed.

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Respectfully submitted,



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